

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ESTATE OF EDWARD LEWIS SCHULZE,
Plaintiff,

v.

CIVIL ACTION NO. 16-12364-DPW

TEXAS INSTRUMENTS, INC.,
Defendant.

REPORT AND RECOMMENDATION ON MOTION TO DISMISS (#43)

In September 2018, Defendant Texas Instruments, Inc., filed a motion to dismiss Plaintiff Estate of Edward Schulze's Second Amended Complaint with prejudice pursuant to Fed. R. Civ. P. 41(b). Defendant complained that Plaintiff had not provided discovery as ordered by the Court, and as a result Defendant was "substantially prejudiced in its ability to defend this action." The motion was never opposed. Shortly thereafter, Attorney Fiore Porreca filed a Motion to Withdraw as counsel for Plaintiff (##47, 46). This Court allowed the Motion to Withdraw (#54) and the representative of the estate has been ordered to notify the Court by August 1, 2019 whether she will retain new counsel or proceed pro se (#63). Given the status of the case, the Court recommends to the District Court Judge, Woodlock, J., that the Defendant's Motion to Dismiss (#43) be denied.

Review by District Judge

The parties are hereby advised that any party who objects to this recommendation must file specific written objections with the Clerk of this Court within fourteen days of service of this Report and Recommendation. The objections must specifically identify the portion of the

recommendation to which objections are made and state the basis for such objections. The parties are further advised that the United States Court of Appeals for this Circuit has repeatedly indicated that failure to comply with Rule 72(b), Fed. R. Civ. P., shall preclude further appellate review. *See Keating v. Secretary of Health & Human Servs.*, 848 F.2d 271 (1st Cir. 1988); *United States v. Emiliano Valencia-Copete*, 792 F.2d 4 (1st Cir. 1986); *Scott v. Schweiker*, 702 F.2d 13, 14 (1st Cir. 1983); *United States v. Vega*, 678 F.2d 376, 378-379 (1st Cir. 1982); *Park Motor Mart, Inc. v. Ford Motor Co.*, 616 F.2d 603 (1st Cir. 1980); *see also Thomas v. Arn*, 474 U.S. 140 (1985).

July 9, 2019

/s/ M. Page Kelley
M. Page Kelley
United States Magistrate Judge